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2011 Edition

Conception and Birth in Connecticut

A Guide to Resources in the Law Library

- **Public policy:** “It is declared that the public policy of this state has been an adherence to the doctrine that every child born to a married woman during wedlock is legitimate.” CONN. GEN. STAT. § 45a-771(a) (2011).
- “We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race.” Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S. Ct. 1110, 88 L.Ed. 1655 (1942).
- **Words of inheritance** to apply to child conceived through A.I.D. (a) The words ‘child’, ‘children’, ‘issue’, ‘descendant’, ‘descendants’, ‘heir’, ‘heirs’, ‘unlawful heirs’, ‘grandchild’ and ‘grandchildren’, when used in any will or trust instrument, shall, unless the document clearly indicates a contrary intention, include children born as a result of A.I.D. (b) The provisions of this section shall apply to wills and trust instruments whether or not executed before, on or after October 1, 1975, unless the instrument indicates an intent to the contrary. CONN. GEN. STATS. § 45a-778 (2011). (Emphasis added).

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Treated Elsewhere: [Child Visitation, Third Party \(Section 2\)](#)

**These guides are provided with the understanding that they represent
only a beginning to research.**

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**This guide links to advance release slip opinions on the Connecticut Judicial
Branch website and to case law hosted on Google Scholar. The online versions
are for informational purposes only.**

Section 1: Artificial Insemination

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to artificial insemination with the semen of a donor (A.I.D.) including status of child born and the rights of the donor of the sperm in Connecticut.

CURRENCY:

- 2011 Edition

DEFINITIONS:

- **A. I. H.** (homologous artificial insemination) is insemination of a married woman with semen of her husband.
- **A. I. D.** (heterologous artificial insemination) is insemination of a married woman with semen of a donor other than her husband
- **Child of the marriage:** "Although the statutes have never explicitly defined the contours of the concept of a 'child of the marriage,' our cases have interpreted that concept in a consistent manner, both before and after the historic 1973 revision. A review of that case law, read in connection with certain other statutory developments, leads us to conclude that the meaning of that concept, in the context of a marital dissolution case, is limited to [includes] . . . a child born to the wife and conceived through artificial insemination by a donor pursuant to §§ 45a-771 through 45a-779." Doe v. Doe, 244 Conn. 403, 435, 710 A.2d 1297 (1998)
- **ARTs** = Assisted Reproductive Technology

STATUTES:

- CONN. GEN. STAT. (2011)
 - [Chapter 802a](#). Wills: execution and construction
 - § [45a-257b](#). Failure of testator to provide for children born or adopted after execution of will. Determination of share of estate.
 - [Chapter 803a](#) Children Conceived Through Artificial Insemination
 - §[45a-724 \(a\)\(2\) and \(3\)](#). Who May Give Child in Adoption
 - §[45a-731\(5\)\(6\)\(7\)](#) Effects of Final Decree of Adoption. Surviving Rights.
 - § [45a-771](#). Child born as a result of artificial insemination legitimate
 - § [45a-772](#). A.I.D. Who may perform. Consent required
 - §[45a-773](#). Request and consent to be filed in Probate Court. Confidentiality
 - § [45a-774](#). Status of child born as result of A.I.D.
 - § [45a-775](#). No rights in donor of sperm or eggs
 - § [45a-776](#). Status of child determined by jurisdiction of birth
 - § [45a-777](#). Inheritance by child conceived as a result of A.I.D.
 - § [45a-778](#). Words of inheritance to apply to child conceived through A.I.D.
 - § [45a-779](#). Status of child conceived through A.I.D., born prior to October 1, 1975

LEGISLATION REPORTS:

- "Insurance coverage for infertility treatment," Janet L. Kaminski, Connecticut General Assembly. Office of Legislative Research Report 2005-

R-0236 (March 1, 2005).

“You asked for infertility treatment coverage requirements in those states [including Connecticut] that mandate coverage.”

- Jennifer Bradey, *Summary of Raftopol v. Ramey*, Connecticut General Assembly. Office of Legislative Research Report [11-R-0094](#)
- Lawrence K. Furbish, *Uniform Status of Children of Assisted Conception Law and Connecticut Law*, Connecticut General Assembly. Office of Legislative Research Report 99-R-0982 (October 1, 1999).

“ . . . the only comparable provisions in Connecticut are our artificial insemination statutes (CGS § 54a-771 through 779). But these are more restrictive than the model law. Our statute covers children conceived through the use of ‘heterologous artificial insemination,’ which is artificial insemination with semen from a man who is not the woman’s husband. Our law establishes how children born through the use of this procedure are to be deemed legitimate and the process that must be followed by the parents, physician, and probate court.”

- Lawrence K. Furbish , *Custody, Surrogate Birth, And Artificial Insemination*, Connecticut General Assembly. Office of Legislative Research Report 98-R-0032 (February 3, 1998).
- Jerome Harleston, *Artificial Insemination and Inheritance*, Connecticut General Assembly. Office of Legislative Research Report 95-R-1099 (October 2, 1995).
- 1975 Conn. Acts 233 (Reg. Sess.). (Substitute H.B. 5147). *An act concerning the status of children conceived through artificial insemination.*

FORMS:

- 13C [AMERICAN JURISPRUDENCE LEGAL FORMS](#) 2D (2002 REV.). Chapter 191. Parent and child
 - § 191:101. Agreement for artificial insemination—Between husband, wife, and donor—Identity of donor known
 - § 191:102. Agreement for artificial insemination—Between recipient and donor—Identity of donor known
 - § 191:103. Agreement for artificial insemination—By recipient and physician—Identity of donor unknown
 - § 191:104. Agreement for artificial insemination—By donor and physician or intermediary—Identity of recipient unknown
- 6 ARNOLD H. RUTKIN, [FAMILY LAW AND PRACTICE](#) (2007) § 63.09[2][a]. FORM: Consent of Husband to Artificial Insemination of Wife

CASES:

- [Raftopol Et Al. v. Karma A. Ramey Et Al.](#), 299 Conn. 681 (2011)
This appeal raises the question of whether Connecticut law permits an intended parent who is neither the biological nor the adoptive parent of a child to become a legal parent of that child by means of a valid gestational agreement.. “...Connecticut law permits an intended parent who is neither the biological nor the adoptive parent of a child to become a legal parent of that child by means of a valid gestational agreement. Id.”
- [Laspina-Williams v. Laspina-Williams](#), 46 Conn. Supp. 165, 171, 742 A.2d 840 (1999). “*Paraskevas v. Tunick*, Superior Court, judicial district of

Litchfield, Docket No. FA950072398 (April 23, 1997) (19 Conn. L. Rptr. 39) (Dranginis, J.) (couple cohabitated for several years and Ms. Tunick conceived a child by artificial insemination. Paraskevas petitioned for visitation of the minor child when the couple separated. Tunick moved to dismiss on several grounds including lack of jurisdiction. The court denied the motion concluding that the separation of a nontraditional family constituted a disruption of the family sufficient to bring the case within the jurisdictional requirements of § 46b-59 and the threshold requirements set forth in *Castagno*.”

- [W. v. W.](#), 248 Conn. 487, 494, 728 A.2d 1076 (1999). [FN7] “This court held that, although § 46b-56 no longer includes the phrase ‘child of the marriage,’ the concept ‘remains implicit in our entire statutory scheme governing marital dissolutions and retains viability by continuing to define who is a parent. . . .’ *Doe v. Doe*, supra, 244 Conn. 403, 422, 710 A.2d 1297 (1998). The court continued: ‘[T]he meaning of [the concept of a ‘child of the marriage’], in the context of a marital dissolution case, is limited to a child conceived by both parties, a child adopted by both parties, a child born to the wife and adopted by the husband, a child conceived by the husband and adopted by the wife, and a child born to the wife and conceived through artificial insemination by a donor pursuant to [General Statutes] §§ 45a-771 through 45a-779.” *Id.*, 435.”
- *In re Simon A. W.*, 1997 Ct. Sup. 5125, 5127-28 (Jud. District, New Haven, No. NO5-CP97-009105-A, May 27, 1997) 1997 WL 309576. “The provisions of Chapter 803a (Sec. 45a-771 through 779) entitled ‘Children Conceived Through Artificial Insemination’ shed no light on this case since, despite its title, they relate exclusively to children conceived by married women through artificial insemination by anonymous donors.”

ENCYCLOPEDIAS:

- 59 [AM. JUR.](#) 2D *PARENT AND CHILD* (2002).
 - § 3. Definitions—“Surrogate mother”
 - § 5. Definitions—“Child artificially inseminated”
 - § 6. Definitions—“Family”
 - § 38. Right of visitation
 - § 56. Obligations of respective parents—Father of child artificially conceived
- Ardis L. Campbell, Annotation, *Determination Of Status As Legal Or Natural Parents In Contested Surrogacy Births*, 77 [ALR5th](#) 567 (2000).
- Robin Cheryl Miller, Annotation, *Child Custody And Visitation Rights Arising From Same-Sex Relationship*, 80 [ALR5th](#) 1 (2000).
- Edward L. Raymond, Jr., Annotation, *Coverage Of Artificial Insemination Procedures Or Other Infertility Treatments By Health, Sickness, Or Hospitalization Insurance*, 80 [ALR4th](#) 1059 (1990).
- Elizabeth A. Trainor, Right of Husband, Wife, or Other Party to Custody of Frozen Embryo, Pre-Embryo, or Pre-Zygote in Event of Divorce, Death, or Other Circumstances, 87 [ALR5th](#) 253 (2001)
- Michael J. Yaworsky, Annotation, *Rights And Obligations Resulting From Human Artificial Insemination*, 83 [ALR4th](#) 295 (1991).
- *Sperm Bank Liability For Donor Semen Transmitting AIDS*, 25 [AM JUR POF3d](#) 1 (1994).
- *Liability Of Sperm Banks*, 50 [AM JUR TRIALS](#) 1 (1994).

TEXTS & TREATISES:

- 8 ARNOLD H. RUTKIN ET AL. [CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).

- Chapter 42. Child custody and visitation
 - § 42.12. Custody claims by third party
- 6 ARNOLD H. RUTKIN, [FAMILY LAW AND PRACTICE](#) (2011).
 - Chapter 64-A. Law of alternative reproductive technologies
 - § 64A.04. Legal issues involved in artificial insemination
 - [1] Introduction
 - [2] Who may perform artificial insemination
 - [3] Donor and recipient
 - [4] Parentage where artificial insemination is by the husband
 - [5] Legal issues involved in artificial insemination by non-husband sperm donor
 - [d] Compensation to donors
 - [6] Practical checklist
 - [7] Checklist
- 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW & PRACTICE](#) (2011).
 - Chapter 1. Overview: development in the law of child custody and visitation
 - § 1.02. The changing definition of “parent:” assisted procreation
 - [2] Types of assisted procreation
 - [b] Artificial insemination
 - [3] Assisted procreation and the Constitution
 - [4] Preconception intentions versus genetic links
 - [5] State parentage laws and assisted procreation
 - [a] Generally
 - [b] Paternal rights
 - [i] Presumption of legitimacy
 - [ii] Artificial insemination
 - [c] Maternal rights
- 2 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW & PRACTICE](#) (2011).
 - Chapter 11A. Assisted reproductive technologies
 - § 11A.01. Clarification of terminology used in ART’s and collaborative reproduction
 - § 11A-02. Medical aspects of ART: What is ART?
 - § 11A-03. Parentage issues in ARTs
 - § 11A-04. Compare adoption: Why ARTs demands a different approach
 - § 11A-05. Statutory overview of collaborative reproduction
 - § 11A-06. Case law on ARTs
 - § 11A-07. Agreements on embryo preservation or other disposition
 - § 11A-08. Preparing collaborative reproduction agreements
 - § 11A-09. Conclusion
- 2 NINA M. VITEK, [DISPUTED PATERNITY PROCEEDINGS](#) (5th ed. 2011).
 - Chapter 17. Assisted reproduction: Constitutional and family law parameters by Ami S. Jaeger
 - § 17.01. Keep your focus on the child
 - § 17.02. Assisted reproduction and collaborative reproduction
 - § 17.03. Directives and agreements
 - § 17.04. Adoptions for children; Donations for embryos
 - § 17.05. Checklist for counseling ART clients
 - § 17.06. Assisted reproduction case law

- 3 JOAN HEIFETZ HOLLINGER ET AL., [ADOPTION LAW AND PRACTICE](#) (2010).
 Chapter 14. Assisted reproductive technologies, collaborative reproduction, and adoption
 § 14.05. Statutory overview of collaborative reproduction
 § 14.06. Case law on ARTs
 § 14.08. Preparing collaborative reproduction agreements
 § 14.20. Charts summarizing state statutes on ARTs
 [2]. Artificial insemination
- SAMUEL GREEN AND JOHN V. LONG, [MARRIAGE AND FAMILY LAW AGREEMENTS](#) (1984).
 Chapter 5. Birth, parenthood and adoption
 § 5.02. Introduction to artificial insemination
 § 5.03. Artificial insemination and adultery
 § 5.04. Status and support rights of the child
 § 5.05. The consent form
 § 5.06. —Ramifications of consent
 § 5.07. Artificial insemination and the unmarried woman
 § 5.08. Confidentiality of the parties

INDICES TOPICS:

- [ALR Index](#): *Artificial Insemination*

LAW REVIEWS:

- Daryl Gordon-Ceresky, Note, *Artificial Insemination: Its Effect on Paternity and Inheritance Rights*, 9 CONNECTICUT PROBATE LAW JOURNAL 245 (Spring, 1995).
- FAMILY ADVOCATE, *Assisted Reproductive Technologies*, Vol. 34, No. 2. Fall 2011
- Elrod, Linda D., *Child's Perspective of Defining a Parent: The Case for Intended Parenthood*, A, 25 BYU JOURNAL OF PUBLIC LAW, no. 2 (2011) p. 245
- William M. Lopez, *Artificial Insemination and the Presumption of Parenthood: Traditional Insemination and Modern Applications for Lesbian Mothers*, 86 CHICAGO-KENT LAW REVIEW. 897 (2011)
- Tiffany L. Palmer, Esq. *The Winding Road to the Two-Dad Family: Issues Arising in Interstate Surrogacy for Gay Couples*, 8 RUTGERS J.L. & PUB. POL'Y 895 (2011)
- William S. Singer, Esq. *Exploring New Terrain: Assisted Reproductive Technology (ART), The Law and Ethics*, 8 RUTGERS J.L. & PUB. POL'Y 918 (2011)

BIBLIOGRAPHIES:

- E. Pratt , *A Pathfinder On Artificial Insemination*,” 8 LEGAL REFERENCE SERVICES QUARTERLY 117 (Spring-Summer 1988).

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*Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian, Connecticut Judicial Department

Section 2:

In Vitro Fertilization

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to in vitro fertilization including coverage by health insurance.
- CURRENCY:**
- 2011 Edition
- DEFINITION:**
- **In vitro** (latin for “in glass”) is the process by which an ovum(egg) is removed from a woman’s ovary and fertilized in a laboratory vessel with sperm of husband or donor.”
- CASES:**
- [In Re Baby M.](#), 537 A.2d 1227 (N.J. 1988) [case superseded by statute]
 - [In the Matter of the Adoption of T.N.F.](#), 781 P.2d 973 (Alaska 1989).
- LEGISLATIVE:**
- “In vitro fertilization,” by Jerome Harleston. Connecticut General Assembly, Office of Legislative Research Report 98-R-0847 (June 26, 1998).
- ENCYCLOPEDIAS:**
- Elizabeth A. Trainor, Annotation, *Right Of Husband, Wife, Or Other Party To Custody Of Frozen Embryo, Pre-Embryo, Or Pre-Zygote In Event Of Divorce, Death, Or Other Circumstances*, 87 [ALR5th](#) 253 (2001).
- TEXTS & TREATISES:**
- 6 ARNOLD H. RUTKIN, [FAMILY LAW AND PRACTICE](#) (2011).
Chapter 64-A. The Law of Alternative Reproductive Technologies
§ 64A.05 Legal issues involved in *In Vitro* fertilization
 - [1] Introduction
 - [2] Parentage issues involved in *In Vitro* fertilization
 - [3] Other issues in *In Vitro* fertilization
 - [4] Practical comment
 - [5] Checklist
 - 1 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW & PRACTICE](#) (2011).
 - § 1.02. The changing definition of “parent” assisted procreation
 - [2]. Types of assisted procreation
 - [d]. *In Vitro* fertilization
 - [e]. *In Vitro* fertilization with donor sperm
 - [f]. *In Vitro* fertilization with donated eggs
 - [3]. Assisted procreation and the constitution
 - 2 NINA M. VITEK, [DISPUTED PATERNITY PROCEEDINGS](#) (5th ed. 2011).
Chapter 17. Assisted reproduction: Constitutional and family law parameters
 - 3 JOAN HEIFETZ HOLLINGER ET AL., [ADOPTION LAW AND PRACTICE](#) (2010).
Chapter 14. Assisted reproductive technologies, collaborative reproduction, and adoption
 - § 14.05. Statutory overview of collaborative reproduction
 - § 14.06. Case law on ARTs

- [2]. Disputes over preserved embryos
- § 14.07. Agreements on embryo preservation or other disposition
 - [1]. Need for agreement
 - [2]. Essential provisions of agreement
- § 14.08. Preparing collaborative reproduction agreements
- § 14.20. Charts summarizing state statutes on ARTs
 - [3]. Egg donation

LAW REVIEWS:

- Daryl Gordon-Ceresky, Note, *Artificial Insemination: Its Effect on Paternity and Inheritance Rights*, 9 CONNECTICUT PROBATE LAW JOURNAL 245 (SPRING, 1995).
- Jennifer Marigliano Dehmel, Note, *To Have Or Not To Have: Whose Procreative Rights Prevail In Disputes Over Disposition Of Frozen Embryos*, 27 CONN. L. REV. 1377 (1994-95).
- Tanya Feliciano, Note, *Davis v. Davis: What About Future Disputes*, 26 CONN. L. REV. 305 (1993).

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Section 3:

Surrogate Motherhood

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to surrogate motherhood in Connecticut including payments to surrogate and contents of agreement

CURRENCY:

- 2011 Edition

DEFINITION:

- “For a fee of \$10,000, a woman agrees to be artificially inseminated with the semen of another woman’s husband; she is to conceive a child, carry it to term, and after its birth surrender it to the natural father and his wife. The intent of the contract is that the child’s natural mother will thereafter be forever separated from her child. The wife is to adopt the child, and she and the natural father are to be regarded as its parents for all purposes.” [Matter of Baby M.](#), 537 A.2d 1227, 1234 (N.J., 1988).
- **Equitable parent doctrine:** [In re Joshua S.](#), 260 Conn. 182 (2002) [W. v. W.](#), 248 Conn. 487, 507 fn9, 728 A.2d 1076 (1999).

LEGISLATIVE:

- Committee Bill No. 5966 (1999). An act concerning surrogate mothers, adoption and guardians of minors. [Not passed].
- Lawrence K. Furbish, Uniform Status of Children of Assisted Conception Law and Connecticut Law, Connecticut General Assembly. Office of Legislative Research Report 99-R-0982 (October 1, 1999).

“Connecticut has not adopted either version of the model act; as you may remember, the model law gives states two options depending on whether or not they wish to allow surrogate parent contracts. Connecticut has no law regarding surrogate parent contracts so we have nothing comparable to these provisions. (We have enclosed for your information a copy of a recent report on surrogacy, 99-R-0857).”
- Lawrence K. Furbish, *Surrogate Parent Contracts in Connecticut and Other States*, Connecticut General Assembly. Office of Legislative Research Report 99-R-0857 (September 3, 1999).

“Connecticut does not either explicitly authorize or prohibit surrogate parenting contracts. Accordingly, people are free to enter into such contracts. As long as both sides live up to the contract there would be no problem.”
- Lawrence K. Furbish, *Doe v. Doe, Supreme Court Decision*, Connecticut General Assembly. Office of Legislative Research Report 98-R-0550 (May 1, 1998).
- Lawrence K. Furbish, *Custody, Surrogate Birth, and Artificial Insemination*, Connecticut General Assembly. Office of Legislative Research Report 98-R-0032 (February 3, 1998).

- Lawrence K. Furbish, *Surrogate Parenting, Sale of Babies, and Permissive Adoption*, Connecticut General Assembly. Office of Legislative Research Report 96-R-01215 (September 16, 1996).
“Connecticut has no law prohibiting, authorizing, or regulating surrogate parenting. People entering or carrying out a surrogate contract would apparently not be violating any law, and a surrogacy arrangement would become legal issue only if the parties had a disagreement and took it to court.”
- *Children Conceived by Artificial Insemination and Carried by a Surrogate Mother*, Connecticut General Assembly. Office of Legislative Research Report 98-R-0477 (March 26, 1998).
Whether parents initiating the process could be listed on the child’s birth certificate without taking any other legal action.

FORMS:

- 13C [AMERICAN JURISPRUDENCE LEGAL FORMS](#) (2002).
Chapter 191. Parent and child
§ 191:97. Surrogate parenting agreement
§ 191:98. Agreement to select surrogate mother
- [NICOLS CYCLOPEDIA OF LEGAL FORMS](#) (2006).
Parent and Child
Surrogate parenting transactions §§ 148:69 - 148.97
§ 148.70 Surrogate parenting agreement
§ 148.80 Surrogate application form

CASES:

- [Raftopol Et Al. v. Karma A. Ramey Et Al.](#), 299 Conn. 681 (2011)
“...Connecticut law permits an intended parent who is neither the biological nor the adoptive parent of a child to become a legal parent of that child by means of a valid gestational agreement.”
- [Doe v. Roe](#), 246 Conn. 652, 653, 717 A.2d 706 (1998). “The narrow question presented by this appeal is whether the Superior Court has subject matter jurisdiction to render judgment in accordance with an agreement that includes a promise by a surrogate mother to consent to the termination of her parental rights in Probate Court.”
- [In Matter of Baby M](#), 537 A.2d 1227, 109 N.J. 396, 77 ALR4th 1 (1988).

ENCYCLOPEDIAS:

- Ardis L. Campbell, Annotation, *Determination Of Status As Legal Or Natural Parents In Contested Surrogacy Births*, 77 [ALR5th](#) 567 (2000).
- Danny R. Veilleux, Annotation, *Validity and Construction of Surrogate Parenting Agreement*, 77 [ALR4th](#) 70 (1990).
- Michael J. Yaworsky, Annotation, *Rights And Obligations Resulting From Human Artificial Insemination*, 83 [ALR4th](#) 295 (1991).
- 48 COA 2d 1 (2011). Cause of Action for Determination of Status as Legal or Natural Parents of Children Borne by Surrogate or Gestational Carrier
- 1 JOAN H. HOLLINGER ET AL., [ADOPTION LAW AND PRACTICE](#) (2010).
Chapter 2. Consent to adoption
- 3 JOAN H. HOLLINGER ET AL., [ADOPTION LAW AND PRACTICE](#) (2010).
Chapter 14. Assisted reproductive technologies, collaborative reproduction and adoption

TEXTS & TREATISES:

- § 14.05. Statutory overview of collaborative reproduction
 - § 14.06. Case law on ARTs
 - § 14.07. Agreements on embryo preservation
 - § 14.08. Preparing collaborative reproduction agreements
 - § 14.20. Charts summarizing state statutes on ART
 - [1] Surrogacy and gestational carriers
- 2 SANDRA MORGAN LITTLE, [CHILD CUSTODY & VISITATION LAW & PRACTICE](#) (2011).
 - Chapter 11A. Assisted reproductive technologies and collaborative reproduction
 - § 11A.05. Statutory overview of collaborative reproduction
 - § 11A.06. Case law on ARTs
 - § 11A.08. Preparing collaborative reproduction agreements
 - [1] Introduction
 - [2] Requirement of medical screening
 - [3] Requirement of psychological evaluation
 - [4] Compensation
 - [5] Relinquishment of parental rights
 - [6] Personal protection of donor or carrier
 - [7] Nature of parties' relationship
 - [8] Summary of elements for gestational carrier agreements
- 6 ARNOLD H. RUTKIN, [FAMILY LAW AND PRACTICE](#) (2011).
 - Chapter 64-A. Law of Alternative Reproduction Technologies
 - § 64A.02. Types of alternative reproductive technologies
 - [5] Surrogate parenting
 - § 64A.07 Legal issues in surrogate parenting.
 - [1] Introduction
 - [2] Parentage issues in surrogate parenting
 - [3] Fees for surrogacy
 - [4] Selecting the surrogate
 - [5] Practical comment
 - [6] Checklist
 - § 64A.08 Proposed statutory provisions for alternative reproductive technologies
- ANN M. HARALAMBIE, [HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES](#) (3rd ed. 2009).
 - Chapter 9. Assisted conception and surrogacy
 - § 9.15. Surrogacy generally
 - § 9.16. Gestational surrogacy
 - § 9.17. Gratuitous surrogacy
 - § 9.18. Surrogacy for a fee
 - § 9.19. Rights of surrogate
 - § 9.20. Status of the surrogate's husband
 - § 9.21. Enforceability and remedies
- 2 NINA M. VITEK, [DISPUTED PATERNITY PROCEEDINGS](#) (2011).
 - Chapter 17. Assisted reproduction: Constitutional and family law parameters
 - § 17.02. Assisted reproduction and collaborative reproduction
 - § 17.03. Directives and agreements
 - § 17.05. Checklist for counseling ART clients
 - § 17.06. Assisted reproduction case law
 - § 17.10. Gestational carriers and surrogates: Why the distinction is

significant

Appendix 17B. State laws on assisted reproduction

§ 17B.01. State laws re: Surrogacy and gestational carriers

- SAMUEL GREEN AND JOHN V. LONG, [MARRIAGE AND FAMILY LAW AGREEMENTS](#) (1984).
Chapter 5. Birth, parenthood and adoption
§ 5.09. Introduction to surrogate motherhood
§ 5.10. Presumption of legitimacy
§ 5.11. Statutory impediments to surrogate motherhood
§ 5.12. —Baby brokerage statutes
§ 5.13. Surrogate motherhood as a constitutional right
§ 5.14. Drafting surrogate motherhood contract
§ 5.15. Issues to be considered before executing the surrogate motherhood contract
§ 5.16. Compensating the surrogate mother
§ 5.17. Enforcing the surrogate motherhood contract
- 15 GRACE M. GIESEL, [CORBIN ON CONTRACTS](#), Rev. Ed. §81.6 Surrogacy Contracts (2003).

LAW REVIEWS:

CONNECTICUT

- Donald D. Mooreland, Note, *Reproductive Technology Outpacing Connecticut Lawmakers*, 14 QUINNIPIAC PROBATE LAW JOURNAL (1999).
- Samuel V. Schoonmaker, III, *Surrogate Parenting: Connecticut's Efforts to Regulate Surrogate Motherhood*, 6 CONNECTICUT FAMILY LAW JOURNAL 1, (JANUARY 1988).
- Joseph B White, *Surrogate Parenting Bill Introduced*, 13 CONNECTICUT LAW TRIBUNE NO. 14 (APRIL 6, 1987).

OTHER

- Elrod, Linda D., *Child's Perspective of Defining a Parent: The Case for Intended Parenthood*, A, 25 BYU JOURNAL OF PUBLIC LAW, no. 2 (2011) p. 245
- George P. Smith, *Razor's Edge Of Human Bonding: Artificial Fathers And Surrogate Mothers*, 5 WESTERN NEW ENGLAND LAW REVIEW 639 (SPRING 1983).
- Greenberg & Hirsh, *Surrogate Motherhood and Artificial Insemination: Contractual Implications*, 29 MEDICAL TRIAL TECHNIQUE QUARTERLY 149 (1982).
- Martha A. Field, *Surrogate Motherhood: The Legal and Human Issues*, 102 HARVARD LAW REVIEW 1074 (MARCH 1989).
- Deborah Kay Walther 'Ownership' of the Fertilized Ovum In Vitro, 26 FAMILY LAW QUARTERLY, NO. 3 (FALL 1992), P. 235.
- Anne Goodwin, *Determination of Legal Parentage in Egg Donation, Embryo transplantation, and Gestational Surrogacy Arrangements*, 26 FAMILY LAW QUARTERLY 275 (FALL 1992)
- Herbert T. Krimmel, *Can Surrogate Parenting be Stopped? An Inspection of the Constitutional and Pragmatic Aspects of Outlawing Surrogate Mother Arrangements*, 27 VALPARAISO UNIVERSITY LAW REVIEW 1 (FALL 1992).

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Section 4:

Wrongful Birth or Life

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the tort of wrongful birth or life in Connecticut.
- CURRENCY:**
- 2011 Edition
- DEFINITION:**
- “The terms ‘**wrongful birth**’ and ‘**wrongful life**’ are but shorthand phrases that describe the causes of action of parents and children when negligent medical treatment deprives parents of the option to terminate a pregnancy to avoid the birth of a defective child.” [Procanik by Procanik v. Cillo](#), 478 A2d 755, 760 (N.J. 1984).
 - ‘**wrongful life**’ refers to a cause of action brought by or on behalf of a defective child who claims that but for the defendant doctor’s negligent advice to or treatment of its parents, the child would not have been born. “*Ibid.*”
- FORMS:**
- *Complaint, petition, or declaration – Birth of child after sterilization operation*, 19B [AmJur Pleading & Practice Forms](#) §234 (2007)
 - *Cause of action for wrongful birth or wrongful life*, 7 [COA](#) 589 (1985).
§ 25. Sample complaint. Wrongful birth action
 - *Cause of action for wrongful birth or wrongful life*, 23 [COA2d](#) 55 (2003).
§ 39. Sample complaint. Wrongful birth action
- CASES:**
- [Bujak v. State](#), 49 Conn. L. Rptr. 221 (2010). Court declined to recognize “wrongful life” cause of action.
 - [Rich v. Foye](#), 51 Conn. Sup. 11, 976 A.2d 819 (Conn. Super. Ct. 2007). Damages for emotional distress in wrongful birth action. Wrongful life claim. “Being born with a handicap instead of not being born is not a legally cognizable injury. Damages for living life with impairments are damages that cannot be calculated or, alternatively, are ones already recoverable under a wrongful birth action.”
 - [Burns v. Hanson](#), 249 Conn. 809, 811, 734 A.2d 964 (1999). “The issues in this action for malpractice arise out of the birth of a healthy child to a severely disabled mother, who, in accordance with medical advice, had decided not to have another child.”
 - [Martinez v. Hartford Hospital](#), 4 Conn. L. Rptr. 57, 60 (1991). “In the instant case, plaintiff has alleged sufficient facts to support a cause of action for medical malpractice. Further, damages arising from defendant’s negligence relating to the birth of the twins and the costs of raising them are properly pleaded and recoverable.”
 - [Ochs v. Borrelli](#), 187 Conn. 253, 258, 445 A.2d 883 (1982). “In our view, the better rule is to allow parents to recover for the expenses of rearing an unplanned child to majority when the child’s birth results from negligent medical care.”
- WEST KEY**
- *Health #687* “Wrongful life” or birth of unhealthy child.

NUMBERS:

ENCYCLOPEDIAS:

- Anne M. Payne, Annotation, *Sexual Partner's Tort Liability To Other Partner For Fraudulent Misrepresentation Regarding Sterility Or Use Of Birth Control Resulting In Pregnancy*, 2 [ALR5th](#) 301 (1992).
- Anne M. Payne, Annotation, *Parent's Child Support Liability As Affected By Other Parent's Fraudulent Misrepresentation Regarding Sterility Or Use Of Birth Control, Or Refusal To Abort Pregnancy*, 2 [ALR5th](#) 337 (1992).
- Russell G. Donaldson, Annotation, *Recoverability Of Cost Of Raising Normal, Health Child Born As Result Of Physician's Negligence Or Breach Of Contract Or Warranty*, 89 [ALR4th](#) 632 (1991).
- Gregory G. Sarno, Annotation, *Recoverability Of Compensatory Damages For Mental Anguish Or Emotional Distress For Tortiously Causing Another Birth*, 74 [ALR4th](#) 798 (1989).
- *Cause of action against physician for wrongful conception or wrongful pregnancy*, 3 COA 83 (1984).
- *Cause of action for wrongful birth or wrongful life*, 7 [COA](#) 589 (1985).
- *Cause of action for wrongful birth or wrongful life*, 23 [COA2d](#) 55 (2003).

TEXTS & TREATISES:

- RICHARD L. NEWMAN AND JEFFREY S. WILDSTEIN, [TORT REMEDIES IN CONNECTICUT](#) (1996).
Chapter 9: "Wrongful pregnancy, birth and life"
§ 9-4 Wrongful birth
- [HANDLING PREGNANCY & BIRTH CASES](#) (1983).
Chapter 6. Prenatal Stage: Emerging Theories of Liability
§§ 6.4 to 6.6 Elements of cause of action
§§ 6.7 to 6.11 Damages
- 2 NINA M. VITEK, [DISPUTED PATERNITY PROCEEDINGS](#) (2007).
Chapter 29. Challenging the obligation to pay child-rearing costs
Liability of third parties affecting the support obligations
§ 29.10. Negligence as basis for "Wrongful Conception" claim
§ 29.11. Events which may create a 'wrongful conception' claim
§ 29.12. Theory and validity of "wrongful conception" cause of action
§ 29.13. Other theories of liability
§ 29.14. Recoveries available
§ 29.15. Rationales for the denial of child-rearing costs
§ 29.16. Rationales for the recovery of child-rearing costs
§ 29.17. Constitutional dimension of the issue: privacy and procreation choice
§ 29.18. Author's strategies

LAW REVIEWS:

- Garrett M. Moore, *Life As An Injury: There Is A Debate Going On Over Whether Actions Known As 'Wrongful Conception' And 'Wrongful Life' Are Valid Causes Of Action*, 23 CONNECTICUT LAW TRIBUNE NO. 47, P. 15 (NOVEMBER 24, 1997).

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*Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial

Branch Supervising Law Librarian, Connecticut Judicial Department

Table 1: Abortion Law in Connecticut

Abortion Law in Connecticut	
Statutes	<p>CONN. GEN. STAT. (2011)</p> <p>Chapter 368y Abortion</p> <p>§19a-600. Definitions</p> <p>§19a-601. Information and counseling for minors required. Medical emergency exception.</p> <p>§19a-602. Termination of pregnancy prior to viability. Abortion after viability prohibited; exception.</p>
History of legislation	<p>1990 Conn. Acts 113 (Reg. Sess.). “An act concerning the repeal of certain statutes”</p> <p>Repealed: CONN. GEN. STAT. (1999) §§53-29, -30, -31, -31a, -31b</p>
Legislative Reports	<ul style="list-style-type: none"> • Robin K. Cohen, <i>State Payment for Abortions</i>, Connecticut General Assembly. Office of Legislative Research Report no. 2010-R-0136 (March 17, 2010). • Elizabeth H. Pytko, <i>Abortion Clinics in Connecticut</i>, Connecticut General Assembly. Office of Legislative Research Report no. 2005-R-0109 (February 3, 2005). • Susan Price-Livingston, <i>Abortions for Minors: Other States’ Parental Involvement</i>, Connecticut General Assembly. Office of Legislative Research Report no. 2003-R-0050 (February 3, 2003). • Sandra N. Bragg, <i>Abortions Performed to Preserve the Life or Health of the Mother</i>, Connecticut General Assembly. Office of Legislative Research Report no. 2000-R-0069 (January 27, 2000). “ . . . the number of abortions performed to preserve the life or health of a mother in the state of Connecticut . . . whether there are federal and state guidelines or regulations that define ‘preserving the life or health of a mother’”. • John Kasprak , <i>Connecticut Abortion Law</i>, Connecticut General Assembly. Office of Legislative Research Report no. 99-R-0263. (February 10, 1999). Connecticut’s law on “post-viability” abortion • John Kasprak, <i>Abortion Laws</i>, Connecticut General Assembly. Office of Legislative Research Report no. 98-R-1132 (September 21, 1998). Comparison of Connecticut’s abortion law with those of other states, particularly in regard to restrictions placed on abortions after the first trimester. “Connecticut is one of four states that have enacted declarations affirmatively protecting a woman’s right to choose an abortion.”
Cases	<ul style="list-style-type: none"> • State v. Clarke, 24 Conn. App. 541 (1991). <i>Demonstration at an abortion clinic</i>.
Texts & Treatises	<p>SAMUEL GREEN AND JOHN V. LONG, MARRIAGE AND FAMILY LAW AGREEMENTS (1984). Chapter 5. Birth, parenthood and adoption. §§ 5.18-5.21.</p>
Law Reviews	<p>David B. Kopel and Glenn H. Reynolds, <i>Taking Federalism Seriously: Lopez And The Partial Birth Abortion Ban Act</i>, 30 CONNECTICUT LAW REVIEW 30 (Fall 1997).</p>

Appendix

ABORTION

Abortion Laws
The Connecticut General Assembly
Office of Legislative Research
Report 98-R-1132

A comparison of Connecticut's abortion law with those of other states, particularly in regard to restrictions placed on abortions after the first trimester

September 21, 1998

FROM: John Kasprak, Senior Attorney

RE: Abortion Laws

You asked for a comparison of Connecticut's abortion law with those of other states, particularly in regard to restrictions placed on abortions after the first trimester.

SUMMARY

Connecticut is one of four states that have enacted declarations affirmatively protecting a woman's right to choose an abortion. Twenty-two states have passed laws prohibiting the use of certain abortion procedures. These are known as "partial birth abortion" laws. Such laws are the subject of court challenges in a number of these states. Connecticut does not have such a law.

Nineteen states have mandatory waiting periods prohibiting a woman from obtaining an abortion until a certain time period passes. Connecticut does not have this.

Thirty states, including Connecticut, have laws generally requiring that women receive state-mandated information and materials concerning fetal development, prenatal care, and other related information.

Thirty-nine states prohibit minors from obtaining abortions without parental consent or notice. While Connecticut does not have such a law, it does require a minor to receive counseling, before getting an abortion, that includes discussion of the possibility of consulting her parents.

Four states have laws requiring physicians to perform tests to determine viability in certain circumstances. Connecticut does not.

Finally, forty states, Connecticut among them, specifically prohibit abortion after viability under specified circumstances.

COMPARISON OF CONNECTICUT'S ABORTION LAW WITH OTHER STATES

Legislative Declaration

Four states, including Connecticut, have legislative declarations affirmatively protecting a woman's right to choose abortion. The others are Maine, Maryland, and Washington.

Connecticut law provides that "the decision to terminate a pregnancy prior to the viability of the fetus shall be solely that of the pregnant woman in consultation with her physician" (CGS § 19a-602(a), (b)).

Maine's law states, "it is the public policy of the State that the State not restrict a woman's exercise of her private decision to terminate a pregnancy before viability" (Title 22, § 1598(1)). Maryland law provides that the state may not interfere with the decision of a woman to terminate a pregnancy: (1) before the fetus is viable or (2) at any time, if an abortion is necessary to protect the life or health of the woman, or the fetus is affected by genetic defect or serious deformity or abnormality (Health-General, § 20-209).

Washington law declares, "every woman has the fundamental right to choose or refuse to have an abortion...The state may not deny or interfere with a woman's right to choose to have an abortion prior to viability of the fetus, or to protect her life or health" (§ 9.02.100).

Another state, Nevada, has a law that affirmatively protects a woman's right to obtain an abortion during the first 24 weeks of pregnancy (§ 442.250). In November 1990, Nevada voters passed a ballot initiative approving this law; as a result, it cannot be amended, repealed, or otherwise changed without a referendum vote.

Partial Birth Abortion

Twenty-two states have enacted partial birth abortion bans. (Connecticut is not one of them.) The laws in seven of these states are in effect, the laws in two of them have been enacted but are not yet in effect, and in three states, the laws are in effect to a limited degree. Federal or state courts have blocked the enforcement of ten of these laws. (OLR Report 98-R-0506 provides more information on this issue and is attached.)

Waiting Periods

Nineteen states have mandatory waiting periods prohibiting a woman from obtaining an abortion until a specified period of time after receiving a state-mandated lecture or materials. Connecticut does not have such a provision. Table 1 following indicates those states with waiting periods and those that are currently enforced.

Table 1: State Laws on Waiting Periods for Abortions

<i>State</i>	<i>Waiting Period</i>	<i>Enforced</i>	<i>Enjoined/ Not Enforced</i>
Delaware	Min. 24 hours		●
Idaho	Min. 24 hours	● 1	

Indiana	Min. 18 hours	●	
Kansas	Min. 24 hours	●	
Kentucky	Min. 2 hours		● 2
Louisiana	Min. 24 hours	●	
Massachusetts	Min. 24 hours		● 2
Michigan	Min. 24 hours		● 3
Mississippi	Min. 24 hours	●	
Montana	Min. 24 hours		● 4
Nebraska	Min. 24 hours	●	
North Dakota	Min. 24 hours	●	
Ohio	Min. 24 hours	●	
Pennsylvania	Min. 24 hours	●	
South Carolina	Min. 1 hour	●	
South Dakota	Min. 24 hours	● 5	
Tennessee	Min. 48 –72 hours		● 2
Utah	Min. 24 hours	●	
Wisconsin	Min. 24 hours		● 7
Total	19	12	7

1. This statute requires that a woman be provided with state-prepared materials at least 24 hours before an abortion, if reasonably possible.
2. A court has ruled that this provision is unconstitutional.
3. A permanent injunction enjoining enforcement of this law is still in effect pending on an appeal of a lawsuit.
4. A court has issued a preliminary injunction prohibiting enforcement of this law.
5. A court has ruled that the penalty provisions of this statute are unconstitutional and severable from the operations sanctions of the law.
6. A woman may not obtain an abortion until the third day after her initial consultation.
7. A court has issued an order prohibiting enforcement of this statute until the state prepared materials are available.

* Source: *National Abortion and Reproductive Rights Action League data, January 1998 - As reported by NCSL (May, 1998).*

Informed Consent

Thirty states (Connecticut among them) have abortion -specific informed consent laws which require that women receive state-mandated information and materials on fetal development, prenatal care, and adoption. The other states are Alabama, Arkansas, California, Delaware, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, and Wisconsin.

A court has issued a temporary restraining order prohibiting enforcement of Florida's law.

Minors' Access to Abortions

Thirty-nine states have laws that prohibit a minor from obtaining an abortion without parental consent or notice. Connecticut does not mandate parental consent or notice but it does require that before obtaining an abortion, a minor must receive counseling that includes discussion of the possibility of consulting her parents.

Currently, thirty of these state laws are enforced. Of the states that currently enforce such laws, two (Idaho, Utah) do not have a judicial or other bypass provision allowing a minor to obtain a court order in lieu of notifying her parents. Four states (Delaware, Maryland, Virginia, and West Virginia) allow a minor to obtain an abortion without parental consent or notice in certain circumstances if a physician or health professional waives the requirement.

Maine permits a minor to obtain an abortion without parental consent or court order if she receives counseling that includes the possibility of involving her parents or another adult family member.

Table 2 following lists those states with parental consent or notice requirements, and the status of the laws.

Table 2: State Laws on Minors' Access to Abortion - Parental Consent or Notice Requirements

<i>State</i>	<i>Consent</i>	<i>Notice</i>	<i>Enforced</i>
Alabama	✓		✓
Alaska	✓		
Arizona	✓		
Arkansas		✓	✓
California	✓		
Colorado	✓		
Delaware		✓	✓
Georgia		✓	✓
Idaho		✓	✓
Illinois		✓	
Indiana	✓		✓
Iowa		✓	✓
Kansas		✓	✓
Kentucky	✓		✓
Louisiana	✓		✓
Maine	✓		✓
Maryland		✓	✓
Massachusetts	✓		✓
Michigan	✓		✓
Minnesota		✓	✓
Mississippi	✓		✓
Missouri	✓		✓

Table 2 (Continued)

<i>State</i>	<i>Consent</i>	<i>Notice</i>	<i>Enforced</i>
Montana		✓	
Nebraska		✓	✓
Nevada		✓	
New Mexico	✓		
North Carolina	✓		✓
North Dakota	✓		✓
Ohio		✓	✓
Pennsylvania	✓		✓
Rhode Island	✓		✓
South Carolina	✓		✓
South Dakota		✓	✓
Tennessee	✓		
Utah		✓	✓
Virginia		✓	✓
West Virginia		✓	✓
Wisconsin	✓		✓
Wyoming	✓		✓

<i>Total</i>	<i>22</i>	<i>17</i>	<i>30</i>
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Source: National Abortion and Reproductive Rights Action League Foundation Report, January, 1998.

Viability Testing

Four states have laws requiring physicians to perform tests to determine viability in certain circumstances (Alabama, Louisiana, Missouri, and Ohio). Courts have issued injunctions prohibiting enforcement of these laws in Louisiana and Ohio.

Post-Viability Bans

Forty states (including Connecticut) and the District of Columbia have laws that specifically prohibit abortion after viability under specified circumstances. Connecticut's law provides that no abortion can be performed after viability unless necessary to preserve the woman's life or health (CGS, § 19a-602(b)). The states without such laws are Alaska, Colorado, Hawaii, Mississippi, New Hampshire, New Jersey, New Mexico, Oregon, Vermont, and West Virginia.

JK:tjo

Attachment: OLR Report 98-R-0506